

JOHN H. FELDMANN III (State Bar No. 61096)  
 LAW OFFICES OF JOHN H. FELDMANN III  
 211 Forbes Ave.  
 P.O. BOX 150329  
 SAN RAFAEL, CA 94915  
 Telephone: (415) 453-8249  
 Facsimile: (415) 453-5872

Attorney for Defendant  
 MARIN APOTHECARIES, INC.  
 dba ROSS VALLEY PHARMACY

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

RICHARD SKAFF	)	Case No. C08-001514395 BZ
	)	
Plaintiff,	)	<b>MARIN APOTHECARIES, INC.'s</b>
	)	<b>ANSWER TO COMPLAINT FOR</b>
vs.	)	<b>PRELIMINARY AND PERMANENT</b>
	)	<b>INJUNCTIVE RELIEF AND</b>
BON AIR ASSOCIATES, A CALIFORNIA	)	<b>DAMAGES; DENIAL OF CIVIL</b>
LIMITED PARTNERSHIP; MARIN	)	<b>RIGHTS AND PUBLIC FACILITIES</b>
APOTHECARIES, dba ROSS VALLEY	)	<b>TO PHYSICALLY DISABLED</b>
PHARMACY, and DOES 1-25, Inclusive,	)	<b>PERSONS; INJUNCTIVE RELIEF PER</b>
Defendants.	)	<b>TITLE III, AMERICANS WITH</b>
	)	<b>DISABILITES ACT OF 1990</b>

Defendant MARIN APOTHECARIES, INC.dba ROSS VALLEY PHARMACY  
 ("Pharmacy") answers the Complaint:

**FIRST CAUSE OF ACTION: DAMAGES AND INJUNCTIVE RELIEF FOR DENIAL OF  
 FULL AND EQUAL ACCESS TO A PUBLIC ACCOMMODATION: PUBLIC  
 FACILITIES IN A SHOPPING CENTER**

**(Sections 19955, Et Seq., Health & Safety Code, Section 54.1 Civil Code)**

1. Answering paragraph 1, The Pharmacy is without sufficient information or knowledge to form a belief as to the allegations that Plaintiff RICHARD SKAFF ("Skaff") requires the use of a wheelchair for locomotion and is unable to use portions of public facilities which are not accessible to disabled persons who require the use of a wheelchair. The remaining allegations in paragraph 1 set forth conclusions of law to which no response is required.

2. **SUMMARY:** Answering paragraph 2, the Pharmacy admits that it is a tenant in the 2 Bon Air Professional Center ("Center") at 2 Bon Air Road, Larkspur, California. The

1 Pharmacy denies that it violated either any disability access law or civil rights law and that Skaff  
 2 was damaged in the manner alleged or in any manner as a result of the Pharmacy's conduct. The  
 3 remaining allegations in paragraph 2 set forth conclusions of law to which no response is  
 4 required.

5 3. **JURISDICTION:** The allegations in paragraph 3 set forth conclusions of law to  
 6 which no response is required.

7 4. **VENUE:** Answering paragraph 4, the Pharmacy admits that the real property  
 8 which is the subject of this action is located in this district. The remaining allegations in  
 9 paragraph 4 set forth conclusions of law to which no response is required.

10 5. **INTRADISTRICT:** Answering paragraph 5, the Pharmacy admits that the real  
 11 property which is the subject of this action is located in this district. The remaining allegations in  
 12 paragraph 5 set forth conclusions of law to which no response is required.

13 6. Answering paragraph 6, the Pharmacy admits that it operates a business in the  
 14 Center in space leased from Bon Air Associates. The Pharmacy is without sufficient information  
 15 or knowledge to form a belief as to the remaining allegations in that paragraph that do not set  
 16 forth conclusions of law to which no response is required and on that basis denies them.

17 7. Answering paragraph 7, the Pharmacy denies that it violated either any disability  
 18 access law or civil rights law and that Skaff was damaged in the manner alleged or in any manner  
 19 as a result of the Pharmacy's conduct. The Pharmacy is without sufficient information or  
 20 knowledge to form a belief as to the remaining allegations in paragraph 7 that do not set forth  
 21 conclusions of law to which no response is required and on that basis denies them.

22 8. Answering paragraph 8, the Pharmacy admits that it operates a business in the  
 23 Center in space leased from Bon Air Associates. The Pharmacy denies that it violated either any  
 24 disability access law or civil rights law and that Skaff was damaged in the manner alleged or in  
 25 any manner as a result of the Pharmacy's conduct. The Pharmacy is without sufficient  
 26 information or knowledge to form a belief as to the remaining allegations in that paragraph that  
 27 do not set forth conclusions of law to which no response is required and on that basis denies  
 28 them.

9. Answering paragraph 9, the Pharmacy admits that it is located in the City of  
 Larkspur, County of Marin, State of California. The Pharmacy denies that it violated either any

1 disability access law or civil rights law and that either Skaff or anyone else was damaged in the  
2 manner alleged or in any manner as a result of the Pharmacy's conduct. The Pharmacy is without  
3 sufficient information or knowledge to form a belief as to the remaining allegations in that  
4 paragraph that do not set forth conclusions of law to which no response is required and on that  
5 basis denies them.

6 10. Answering paragraph 10, the Pharmacy is without sufficient information or  
7 knowledge to form a belief as to the allegations in that paragraph that do not set forth conclusions  
8 of law to which no response is required and on that basis denies them.

9 11. Answering paragraph 11, including subparagraphs A through E, the Pharmacy  
10 admits that Skaff went through the process of being fitted for special stockings in a room that it  
11 uses to measure customers for fittings. The Pharmacy denies that Skaff was required to proceed  
12 down a narrow hallway and that the room was so small that the Pharmacy employee had to climb  
13 over Skaff's wheelchair to take the measurements for the fitting. The Pharmacy further denies that  
14 it violated either any disability access law or civil rights law and that Skaff was damaged in the  
15 manner alleged or in any manner as a result of the Pharmacy's conduct. The Pharmacy is without  
16 sufficient information or knowledge to form a belief as to the remaining allegations in those  
17 paragraphs that do not set forth conclusions of law to which no response is required and on that  
18 basis denies them.

19 12. Answering paragraph 12, the Pharmacy denies that Skaff encountered barriers to  
20 access on June 19, 2007 as a result of the Pharmacy's conduct. The Pharmacy is without  
21 sufficient information or knowledge to form a belief as to the remaining allegations in that  
22 paragraph that do not set forth conclusions of law to which no response is required and on that  
23 basis denies them.

24 13. Answering paragraph 13, the Pharmacy admits that either on or about June 21,  
25 2007, Skaff returned to pick up his specially fitted stockings. The Pharmacy denies that Skaff  
26 encountered barriers to access on that date as a result of the Pharmacy's conduct. The Pharmacy is  
27 without sufficient information or knowledge to form a belief as to the remaining allegations in  
28 that paragraph that do not set forth conclusions of law to which no response is required and on  
that basis denies them.

14. Answering paragraph 14, the Pharmacy is without sufficient information or

1 knowledge to form a belief as to the allegations in that paragraph and on that basis denies them.

2 15. Answering paragraph 15, the Pharmacy is without sufficient information or  
3 knowledge to form a belief as to the allegations in that paragraph and on that basis denies them.

4 16. Answering paragraph 16, the Pharmacy is without sufficient information or  
5 knowledge to form a belief as to the allegations in that paragraph and on that basis denies them.

6 17. Answering paragraph 17, the Pharmacy is without sufficient information or  
7 knowledge to form a belief as to the allegations in that paragraph that do not set forth conclusions  
8 of law to which no response is required and on that basis denies them.

9 18. Answering paragraph 18, the allegations in that paragraph set forth conclusions of  
10 law to which no response is required.

11 19. Answering paragraph 19, the allegations in that paragraph set forth conclusions of  
12 law to which no response is required.

13 20. **INJUNCTIVE RELIEF:** Answering paragraph 20, the Pharmacy denies that it  
14 violated either any disability access law or civil rights law and that either Skaff or anyone else  
15 was damaged in the manner alleged or in any manner as a result of the Pharmacy's conduct. The  
16 Pharmacy is without sufficient information or knowledge to form a belief as to the remaining  
17 allegations in that paragraph that do not set forth conclusions of law to which no response is  
18 required and on that basis denies them.

19 21. **DAMAGES:** Answering paragraph 21, the Pharmacy denies that it violated either  
20 any disability access law or civil rights law, that Skaff was damaged in the manner alleged or in  
21 any manner as a result of the Pharmacy's conduct, and that Skaff is entitled to any damages either  
22 statutory in nature or otherwise. The remaining allegations in that paragraph set forth conclusions  
23 of law to which no response is required.

24 22. **FEES AND COSTS:** Answering paragraph 22, the Pharmacy denies that it  
25 violated either any disability access law or civil rights law, that either Skaff or anyone else was  
26 damaged in the manner alleged or in any manner as a result of the Pharmacy's conduct, and that  
27 Skaff is entitled to recover all reasonable attorney's fees and costs. The remaining allegations in  
28 that paragraph set forth conclusions of law to which no response is required.

23 23. Answering paragraph 23, the Pharmacy denies that it violated either any disability  
24 access law or civil rights law, that either Skaff or anyone else was damaged in the manner alleged

1 or in any manner as a result of the Pharmacy's conduct, and that Skaff is entitled to either any  
 2 injunctive relief, damages, costs or attorney's fees. The remaining allegations in that paragraph  
 3 set forth conclusions of law to which no response is required.

4 **SECOND CAUSE OF ACTION:**

5 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

6 **42 USC SECTION 1210FF**

7 24. Answering paragraph 24, the Pharmacy incorporates its responses to paragraphs 1  
 8 through 23 into this response.

9 25. Answering paragraph 25, the allegations in that paragraph set forth conclusions of  
 10 law to which no response is required.

11 26. Answering paragraph 26, the allegations in that paragraph set forth conclusions of  
 12 law to which no response is required.

13 27. Answering paragraph 27, the allegations in that paragraph set forth conclusions of  
 14 law to which no response is required.

15 28. Answering paragraph 28, the Pharmacy denies that it violated Skaff's rights under  
 16 the ADA and its regulations. The remaining allegations in that paragraph set forth conclusions of  
 17 law to which no response is required.

18 29. Answering paragraph 29, the Pharmacy denies that Skaff encountered any barriers  
 19 at the Pharmacy and specifically denies that it violated any disability access law. The remaining  
 20 allegations in paragraph 29 set forth conclusions of law to which no response is required.

21 30. Answering paragraph 30, the Pharmacy denies that Skaff and other disabled  
 22 wheelchair users either have been or are currently denied access to the Pharmacy and specifically  
 23 denies that it violated either any disability access law. The remaining allegations in paragraph 30  
 24 set forth conclusions of law to which no response is required.

25 31. Answering paragraph 31, the Pharmacy denies that Skaff and other disabled  
 26 persons either have been or are currently either subjected to discrimination or denied full and  
 27 equal access to the Pharmacy and specifically denies that it violated any disability access law or  
 28 civil rights law. The remaining allegations in paragraph 31 set forth conclusions of law to which  
 no response is required.

32. Answering paragraph 32, the Pharmacy denies that Skaff either has been or is being subjected to discrimination on the basis of disability as a result of the Pharmacy's conduct and specifically denies that it violated any disability access law or civil rights law. The remaining allegations in paragraph 32 set forth conclusions of law to which no response is required.

### **AFFIRMATIVE AND OTHER DEFENSES**

Without admitting any of the allegations in the Complaint, the Pharmacy alleges the following separate affirmative and other general defenses:

1. The Complaint fails to state a claim upon which relief can be granted.
2. Skaff did not sustain any injuries as a proximate result of any of the acts alleged in the Complaint.
3. Skaff's claims are barred by the relevant statutes of limitations.
4. Skaff failed to exhaust appropriate administrative remedies.
5. Skaff failed to exercise ordinary care, caution or prudence to avoid his alleged injuries and the resulting damages to him, if any, were proximately caused by his conduct.
6. Skaff assumed the risk of the alleged acts and, therefore, has waived and is estopped from asserting his claims.
7. Skaff unreasonably delayed asserting his claims, which is prejudicial to the defense of this action and, therefore, his recovery is either barred or diminished under the doctrine of estoppel.
8. Skaff failed to take reasonable steps to mitigate his alleged injuries.
9. Skaff's claims are moot.
10. Skaff's claims are barred by the doctrine of unclean hands.
11. Skaff's claims are barred by the doctrine of laches.
12. Skaff consented to the conduct that he alleges in the Complaint.
13. The conduct alleged in the Complaint, to the extent it occurred, was privileged and justified and done in good faith and no action may be taken against the Pharmacy on account of its conduct.
14. Persons or entities other than the Pharmacy caused any damage sustained by Skaff.
15. The Pharmacy did not ratify or approve any wrongful conduct.
16. Skaff's state claims are preempted by federal law.

1           17.       Skaff lacks standing to assert the claims in the Complaint.

2           18.       The Pharmacy is in compliance with all statutory obligations to persons with  
3 disabilities.

4           19.       Skaff's claims for injunctive relief are barred by state law.

5           20.       Skaff failed to provide notice to the Pharmacy of any of the alleged violations of  
6 law contained in his Complaint before filing this action.

7           21.       The alterations to access, to the extent that they are required, are not readily  
8 achievable without fundamentally altering the nature of the goods, services and facilities being  
9 provided.

10          22.       The Pharmacy is not required to: (1) make the Pharmacy more accessible to and  
11 usable to persons with disabilities; (2) take action that would result in undue financial or  
12 administrative burdens; or (3) make structural changes to the existing facility, where other  
13 methods have been effective in achieving compliance with the law.

14          23.       The Pharmacy is informed and believes that Skaff's claims are barred because the  
15 Center has performed or is in the process of performing all readily achievable architectural barrier  
16 removal required by law.

17          24.       The Pharmacy is informed and believes that the Skaff's claims are barred because  
18 the Center has remedied or is in the process of remedying an access barrier with alternative  
19 methods of access.

20          25.       The Pharmacy is informed and believes that no less discriminatory alternatives  
21 were available.

22          26.       The Pharmacy is informed and believes that it was required to act out of business  
23 necessity, in that there was no acceptable alternative to accomplish the same business goal with  
24 less discriminatory impact.

25          27.       The Pharmacy had non-discriminatory reasons for the actions alleged in the  
26 Complaint.

27

28

1           28.     The Pharmacy is not responsible under the law and its lease for any access  
2 violations.

3           The Pharmacy reserves the right to allege other affirmative general defenses, as  
4 they may become known in the course of discovery.

5           The Pharmacy prays:

- 6           1.     That Skaff take nothing by the Complaint;
- 7           2.     That the Complaint be dismissed with prejudice and that judgment be  
8 entered in the Pharmacy's favor;
- 9           3.     That the Pharmacy recover its cost, including reasonable attorney's fees;  
10           and
- 11           4.     That the Court grant other relief as it may deem appropriate.

12                           **DEMAND FOR JURY TRIAL**

13           The Pharmacy demands a trial by jury.

14           DATED: February 11, 2008

15           LAW OFFICES OF JOHN H. FELDMANN III

16           By:     /s/ \_\_\_\_\_  
17                   John H. Feldmann III

18           Attorney for Defendant  
19           MARIN APOTHECARIES, INC.  
20           dba ROSS VALLEY PHARMACY  
21